



**Agenda Item No. 4a.**

**Staff Report**

**Date:** October 6, 2015

**To:** Mayor and Ross Town Council

**From:** Sal Lucido, Contract Building Official

**Subject:** 90 Sir Francis Drake Boulevard, Appeal of Construction Penalties Assessment

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**Recommendation**

Hold a public hearing at a Special Council Meeting to continue the discussion from the regular Council Meeting on 8/13/15 for the appeal of construction penalties, late charges and interest against 90 Sir Francis Drake Blvd., as calculated per the Town's "Time Limits for Completion of Construction Ordinance" (Ross Municipal Code, Chapter 15.50, TLCC Ordinance 579-2003, updated by Ordinance 601-2007) and adopt a resolution outlining the decision of the appeal.

**Project Summary**

Owner:	Michael Board
Location:	90 Sir Francis Drake Boulevard, (APN 072-151-06)
Project:	SFD Addition and Remodel
Permit Number(s):	17716, 17796, 17920, 18050, 18144 & 18206
Original Project Valuation:	\$204,974 (original, time limit: 15 months)
Revised Project Valuation:	\$523,000 (modified scope, time limit: 18 months)
First Permit Issued Date:	1/23/13 (initiates start of project)
Construction Completion Deadline:	7/23/14 (18 months)
Project final date:	4/2/15
Calculated Penalties:	\$163,000

**Background**

Please refer to the Staff Report for the August 13, 2015 Town Council meeting (Item 14a).

At the August 13, 2015 council meeting, the appellant's attorney, Mr. Rifkind, represented Mr. Board and presented an opening statement and asked council to allow testimony from neighbors in support of the project. Mr. Rifkind also distributed a detailed response packet.

Council determined, that to properly review the additional material submitted, the Public Hearing was postponed to a later Council date and then later moved to a Special Meeting.

Under state law, the resolution must be adopted by the affirmative vote of three members of the Town Council. Gov. Code § 36936.

On September 18, 2015, the Town Attorney received, by Email, a detailed appeal from Mr. Rifkind, and distributed it to staff and Town Council. This staff report provides a summary and discussion of the items raised in Mr. Rifkind's 9/18/15 appeal letter and exhibits.

### **Discussion**

The Town Council must hold a hearing on the appeal and may affirm, modify, or cancel the penalty.

An owner may appeal a construction completion penalty, "on the grounds that the property owners were unable to comply with the construction time limit for reasons beyond the control of themselves and their representatives." The grounds for appeal include, but are not limited to, "labor stoppages; acts of war or terrorism; and natural disasters." Grounds for appeal do not include, "delays caused by the winter-rainy season; the use of custom and/or imported materials; the use of highly specialized subcontractors; significant, numerous, or late design changes; access difficulties associated with the site; failure of materials suppliers to provide such materials in a timely manner; or by delays associated with project financing." (RMC §15.50.090(a))

The construction completion ordinance further provides, "When appealing penalties ... the appellant shall submit documentary and other evidence sufficient to establish that design decisions, construction drawings and documents, bids and construction contracts, permit applications, and compliance with all required permit conditions were undertaken in a diligent and timely manner. Required documentary and other evidence shall demonstrate to the Town Council's satisfaction that construction delays resulted from circumstances fully out of his or her control and despite diligent and clearly documented efforts to achieve construction completion within those time limits established in this chapter. Penalties made pursuant to this section shall not be modified or cancelled unless the evidence required in this section is submitted at the time of appeal."

It is standard practice in the Town of Ross that prior to permit issuance, the owner signs two acknowledgements and the contractor signs one acknowledgement of the construction completion requirements. The building permit and job card also identified the construction completion date. Condition of Approval items are also required to be on the plans. Town Council condition of approval Number 31 provided, "This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice."

## GROUND FOR APPEAL

The September 18, 2015, Rifkind letter cites 13 specific items in support of the appeal. The September 18<sup>th</sup> letter does not include some of the points raised in the August 13, 2015 appeal letter and includes different day credit calculations. Staff has assumed that the September 18<sup>th</sup> letter is intended to govern the appeal. However, staff has responded to those items from the August 13, 2015 appeal letter that were not also addressed in the September 18<sup>th</sup> letter.

Excerpts from the September 18<sup>th</sup> appeal letter appear in *italicized* font below with staff responses following in regular font. References to alphabetically labeled exhibits refer to those found in Mr. Rifkind's 9-18-15 packet, and numbered exhibits are attached to this staff report.

1. ***Stop Work Order Improperly Issued. October 23, 2013 to January 30, 2014. A copy of the Stop Work Order (SWO) is attached as Exhibit D. A SWO should never have been issued in these circumstances related to roof framing not in compliance with approved plans, in which at the roof ridge one side of the roof was approximately 10 inches higher than the other side. In addition an upstairs bathroom was framed not according to approved plans in which the exterior wall was perpendicular to the floor rather than sloped – an easy correction. Former 12-year Building Inspector Robert Haggett is anticipated to testify that he issued the SWO at the direction of Town Manager Rob Braulik, over Mr. Haggett's objections. Rather, Mr. Haggett is anticipated to testify that a Notice of Correction ("NOC") should have been issued. Cal. Building Code Sees. 11 0.6, 115. If a NOC had been issued, the project could have continued without delay and an as-built change in plans corrected. The project at this time (Fall of 2013) was not completely framed and/or closed-in and could have been corrected or modified. Finally, there is no evidence that the roof height fails to comply with the height limits of the zoning ordinance.***

*Specifically, California Building Code section 110.6 states in pertinent part, " Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official." Section 115.1(A) states in pertinent part, "Whenever the building official finds any work ...performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order. "*

The SWO resulted from the Project's noncompliance with Condition #1 of the Variance and Design Review No. 1897 that the project comply with the construction plans dated September 25, 2012 as approved by the Town Council on October 8, 2012. In particular, the Project's second story addition failed to conform to the main roof form of the residence. The changes to building height and dormer design were elementary parts of the design review approval. Pursuant to Condition #23 of the Variance and Design Review No. 1897, failure to comply in any respect with the conditions or approved plans constitutes grounds for Town Staff to immediately stop work related to the noncompliance until the matter is resolved. In particular, staff needed to assess whether the changes necessitated further Town Council design review approval, or whether the changes were in "substantial conformance" with the plans and could be administratively

approved. The Town legally and properly issued a stop work notice, and maintained it until the noncompliance issues were resolved. Staff issued clear direction and assistance on how to obtain compliance. Once the revised plans were submitted, the Town timely processed the approval in a timely manner.

*On October 30, 2013, one week after the SWO was posted, staff sent Mr. Board an email advising he needed to pay \$5,351.43, representing triple fees to approve modifications made to the roof. The modifications were de minimus and not intentional as indicated. Upon receipt of staffs October 30, 2013, Mr. Board acknowledged the errors of his contractor and architect that occurred without his approval or knowledge and requested the Town's assistance to do whatever was necessary to withdraw the SWO and begin construction again. Exhibit E. With the project red tagged, Mr. Board could not winterize the property, resulting in complete water saturation of bare framing that took a month to dry out. (See No. 3 below).*

*Mr. Board was told he needed to go back to the Town Council on December 12, 2013, almost two months after the initial red tag, to receive approval of revised plans that then would need to be plan checked again over many weeks that would be further delayed by the holidays when the Town was closed for business. On November 4, Mr. Board tried to meet with staff and was willing to change "whatever is needed. Exhibit F. On November 11, 2015, Mr. Board apologized to staff and literally was pleading for assistance of how to resolve getting the red tag lifted. Exhibit G. Then, Mr. Board was advised by staff no further design review would be needed if he could return the project to the original approved plans, which he readily and always agreed to do, or alternatively he may actually have received design review approval if submitted because the change in the roof was so slight. However, at staffs direction, he gave up the December 12 hearing date and found himself in early January no closer to having the red tag lifted than when it issued improperly in October. There are communications between Mr. Board and staff on December 22, and 21, 2013 showing again an earnest intent to get the project moving. Exhibit H. As a practical matter, the red tag was not lifted until January 30, 2014. In sum the entire SWO period from October 23, 2013 to January 30, 2014 should be eliminated from the Project timeline warranting a reduction of 99 days of Project construction time.*

On October 8, 2012, the town council approved the following:

- 1.) Design review of a 559 square foot second story addition that complies with setback requirements. The second floor was to be within the main roof form of the residence, with the addition of new shed dormers and windows on the north and south elevations.
- 2.) repairs to the garage and pool house and modifications to the pool patio area.

March 14, 2013 the town council approved a revised project that included

- 1.) extending the garage to the east by four feet, within the north side yard setback (15 feet required, 0 feet existing and proposed);
- 2.) attaching the garage to the residence with a 150 square foot laundry room addition and roof modifications that increase the height of the structure within the side yard area;
- 3.) modification to the floor plan at the upper level to increase the upper level floor area

from 535 square feet to 866 square feet by finishing attic areas.

Plans proposed and approved in March did not include changes to the previously approved dormer design. However, upon review of the plans it is clear that the interior alterations could not have occurred without requiring changes to the exterior. The plans did not accurately reflect the proposed exterior changes needed.

The Building Permit for modified Town Council approved plans was issued on July 9, 2013.

On July 18, 2013, Planning staff was informed that the windows had been removed and that some of the openings had been enlarged. Since the Town Council did not approve of the window removal and the building permit plans and energy calculations did not specify that windows would be removed, replaced or enlarged, staff notified the applicant, that more information about the windows was needed.

On August 7, 2013, the applicant's architect sent PDFs of revised plans reflecting the window changes and noted that the plans reflect a note that "all windows and doors to be replaced with new wood clad units." The architect requested reconsideration of the requirement of the use of wood clad windows on the non-publicly visible side

On August 8, 2013, Planning staff informed the applicant's architect that the design of the windows and garage door should remain as approved by Town Council. The architect was also advised that if the applicant would like to use the vinyl windows with no divided lites, they would need to request an amendment to the design review approval from the Town Council.

On October 18, 2013, Planning staff drove by the site and noticed that the roof had been reframed and that the reframing was not consistent with what was approved by Town Council. Planning staff also noted that the vinyl windows had been installed without prior approval.

October 23, 2013 a stop work order was placed on the site for changes and work on the windows and roof that were done outside the scope of the approved plans and permits.

Planning offered the applicant the option of seeking Town Council approval for the modifications. At that time, staff advised the applicant that the changes would not be supported by staff (See email dated 10/30/2013, Exhibit E). Staff also informed the applicant that if he wished to remove the unpermitted work and proceed with the previously approved plans, a written statement by him would be necessary. Window work would require submittal of revised plans to the building department for review and approval, and revised energy calculations, prior to working on the windows. Mr. Broad was informed that quality window would be necessary.

The applicant ultimately chose not to go forward with a modification request, but instead (on 12/9/13) requested an alternative roof design that consisted of truncating the roof ridge to match the height of the ridge that is visible from the front of the property. On 12/17/13, Planning staff

informed the applicant that the proposed modifications could be approved administratively. He was directed to submit building permit modifications to the building department for review.

In summary, the delay of approximately 14 weeks was caused by the applicant's actions, not the Town's actions or inactions.

2. ***Drying out period.*** *Month of February, 2014. No work could be done because the property was still wet and needed to dry out. The red tag was lifted on January 30, 2014 and new inspections by staff do not appear in the record until early March 2014, warranting a reduction of 30 days of Project construction time. See Town Inspection Log, Exhibit C.*

Installing and maintaining framing members with the proper moisture content is a code requirement and the responsibility of the contractor to properly secure the site and protect the framing during the rainy season. A project with a SWO (red tag) does not relieve the contractor of this responsibility to secure and maintain the site. Nor does the SWO prevent the contractor from doing so. See email thread in Exhibit 2.

3. ***Town's Slow Response to Mr. Board's Request for Assistance.*** *Mr. Board experienced at best what can be termed a flawed customer experience with staff. His phone bills, attached as Exhibit I, reflect few return phone calls from Town. In total he made 27 calls to Town, and received 1 [not a typo] return call. The lack of response and assistance surely slowed down the project for Mr. Board. While it is hard to provide a firm number of days credit to this item, we suggest the delay warrants a reduction of at least 15 days of Project construction time.*

Staff would like clarification on how this number was obtained. The duration of many of the highlighted calls ranges from 2-5 minutes or more. This would indicate that Mr. Board's call was received by a member of staff. How many were calls where Mr. Board left a voice mail message? It is unlikely that staff did not return a call where a voice message was left. It is also possible that voice messages were returned via e-mail. The phone records do not include the year, nor do they appear to cover the entire span of the project.

4. ***May, 2014. Sidewalk and Disability Access Improvements Sidewalk Project.*** *Condition of approval No. 34 to the approved plans provides, "All cracked, broke or uplifted sidewalk fronting the property shall be replaced prior to project final. The property owner shall maintain 4 feet of clearance on the sidewalk at all times, even after project final." In May 2014, Staff required for the first time expanded sidewalk and disability access improvements from initially approximately 4 feet wide to now 6 feet wide, 110 feet in length, including a disability access ramp, at a cost of approximately \$22,000. The scope of the sidewalk repair was subject to staff discretion. See Exhibit J. To make matters worse, the Town then hired Owner's contractor, Calvary Construction, to do other flat work, creating additional delays in Owner's project. The expanded work was not completed until October 2014. This expansion of the sidewalk and disability access repair added at least 60 days to Project construction time. After the expanded sidewalk project was completed, Mr. Board had to demolish a portion of it to install a new unanticipated sewer lateral required by the new Ross Valley Sanitary*

*District ordinance that became effective January 1, 2015.*

The sidewalk repair/replacement requirements should have been anticipated by the applicant. Two Council Members commented on the disrepair of the sidewalk along the Property during the October 8, 2012 public hearing on the Project. (See October 8, 2012 Minutes, p. 37.) Further, the Town Council's approval of Variance and Design Review No. 1897 was expressly conditioned upon "sidewalk repair to be approved by staff." (See October 8, 2012 Minutes, p. 38.) It is the responsibility of the contractor to know the disability access requirements under the Americans with Disabilities Act. Mr. Board could have met with staff in 2012 to determine the extent of the sidewalk replacement requirements. The project could have been completed prior to the RVSD ordinance taking effect.

***Unanticipated Work Required After House Substantially Complete on December 8, 2014*** (The construction lender funded the General Contractor his final payment on December 8, 2014 which was 115 days prior to the final signature on the job card on April 2, 2015. Items 5 to 9 are the reasons for this 115 day delay, and they were all unexpected and out of Mr. Board's control):

Project funding and substantial completion are not the criteria for project final and occupancy. Project completion is defined as the completion of all construction work, including site clearing and receiving final inspection and written approval of the applicable work by Town Building, Planning and Ross Valley Fire Department staff.

5. ***Sewer Lateral.*** On January 1, 2015, Ross Valley Sanitary District added a new requirement for sewer laterals to meet a pressure test or to be replaced. Trying to obtain bids and complete this unanticipated work to replace a 35 foot sewer lateral that cut into both the newly poured 6 foot sidewalk and into busy Sir Francis Drake Boulevard added 45 days to the Project construction time. See Exhibit K.

Condition #25 of the Variance and Design Review No. 1897 states that the Project must comply with all requirements of all utilities including, but not limited to, Ross Valley Sanitary District, prior to project final. Condition #25 further required that letters confirming compliance to be submitted to the building department prior to project final. Had the Owner completed construction by the deadline of July 23, 2014, the new sewer lateral requirement would not have interfered with completion of the Project. At the time the Owner was constructing the new sewer lateral there were still other items of unfinished work at the Project, including landscaping, MMWD project-sign off, and correcting the location of the HVAC unit.

6. ***Fire Code Compliance.*** Ross Valley Fire Department made 34 contacts/inspections of the property. After plans were approved by RVFD, they made multiple inspections and added a new requirement on each inspection instead of providing an initial punch list. On January 22, 2015, for the first time RVFD required a fire wall above the garage to the attic. This additional requirement added 30 days to the project. This item was difficult to do because the general contractor was no longer available having been paid in full in December, and no other contractor's wanted the work to "touch" a fire wall. See RVFD Occupancy Detail Report,

*Action Item No. 32, attached as Exhibit L.*

It is the property owner's responsibility to build a structure that meets the code requirements. Code requirements cannot be waived simply because they did not appear as deficiencies at previous inspections. As stated in the Staff Report for Variance and Design Review No. 1897, Ross General Plan 5.3 required that buildings should be designed to be fire defensive. (Staff Report – Agenda Item No. 21 by Ms. Semonian, dated Sept. 26, 2012, p. 14.) Condition #29 of the Variance and Design Review No. 1897 states that the Project is required to comply with all requirements of the Ross Valley Fire Department. RVFD will provide a detailed response to this item.

**7. Additional Fire Sprinklers.** *When RVFD came to inspect the extended fire wall, RVFD then added for the first time the requirement for two (2) new additional sprinkler heads in the attic above the garage. This item added twenty days to time of construction. See Exhibit M.*

Condition #30 expressly required sprinklers to be installed in the residence. Corrections were issued when the Fire inspectors identified noncompliance with the building and fire codes.

**8. Pool Water.** *Owner received conflicting information from staff on whether he could fill his pool with MMWD supplied water or had to truck in the water. Staff advised there was a moratorium on using MMWD water. Mr. Board located several companies that would truck water in from other locations and received multiple bids for the work before eventually learning from MMWD that no such moratorium was in place. This miscommunication caused 30 delay. See Exhibit N, attached.*

If there was a miscommunication, how did this cause a delay of 30 days? The Owner was advised to, and should have confirmed this requirement with MMWD.

**9. New Exterior Garage Fence.** *In spring 2015, for the first time, not required on originally approved plans, staff required an additional fence to be built between the neighbor's garage and the subject property's garage to protect from entry to the pool area. This item added 20 days to the time of construction.*

A barrier fence is required as a pool safety code requirement. It is staffs' understanding that the applicant was waffling between keeping and repairing the pool versus demolishing it. He decided to keep the pool which required compliance with the pool safety requirement. The applicant was advised in the Spring of 2014, not 2015, that there were numerous pool safety requirements that must be met if he kept the pool. An additional 3' segment of fence was required to complete the pool barrier in addition to repairs to the existing fence.

**10. Other Policy Considerations.**

- a. The Project Complied with Purpose of Time Limits for Completion of Construction Ordinance Because of its Location and Lack of Neighbor Complaints.** *The purpose of Ross Municipal Code Chapter 15.50 is in pertinent part to: "... to ensure neighbors and*



*neighborhoods quality of life is maintained and activities associated with construction such as increased noise, traffic and associated impacts are managed in a way to ensure construction is completed in a timely way. " RMC Sec. 15.50. 020(d). MHPA is aware of no written or oral neighbor complaints to the Town, and MHPH received no neighbor complaints regarding project noise or inconvenience. Copies of neighbor letters opposed to imposing fines are attached as Exhibit O. Additionally, the project was substantially completed on December 8, 2014 with no further work required by the General Contractor and no further construction related traffic or parking. In fact the primary work completed between the required completion date of July 23, 2014 and December 8, 2014 was the expanded sidewalk project required of Mr. Board*

The Ordinance sets forth strict limits for construction completion, and a clear rule on when construction shall be deemed completed ("...the satisfactory performance of all construction work, including but limited to compliance with all conditions of application approval and the clearing and cleaning of all construction-related materials and debris from the site, and the final inspection and written approval of the applicable work by Town Building, Planning and Ross Valley Fire Department staff."). Except where the Town Manager determines that final inspections were delayed by staff (Section 15.50.080(c)), the Ordinance sets forth automatic penalties. Thus, there is a legislative presumption of harm to the community due to long delays in the completion of construction. There is no need for the Town to show specific harm to neighbors. However, the Ordinance gives the Town Council discretion to determine whether circumstances beyond the control of the owner or its representatives caused the construction delays (Section 15.50.090). Thus, the Town Council, in its appellate capacity, has authority to determine the appropriate penalty based on the facts and circumstances in each case.

- b. Town of Ross Focused on Revenue Collection, Not Helping Property Owners Complete Their Projects.*** According to former building inspector, Robert Haggett, a 12 year veteran of the Town Building Department, the modus operandi changed under the leadership of former Town Manager, Rob Braulik, who became focused on revenue collection as opposed to service. See Exhibit P, in which staff writes "the landscaping is pathetic." The focus became how to collect the most fees possible and require resubmittals of new plans where formerly correction notices were issued and projects continued to proceed with work. This change of policy greatly delayed the project by issuance of an improper stop work order because the project present no clear and present danger or safety violation, creating a 99 day delay.

The Owner has argued that the Town's purpose in this matter has been to maximize revenues. The record shows that the Town's focus in this matter has been securing code compliance based on approved plans and conditions. The building was red tagged to ensure the building was not constructed at excessive height in violation of the Town Council's design review approval. What is clear from the record is that Town Staff did not believe that certain work on this project met the Town's standards, that there were changes to the project and that these factors combined to cause delay.

- c. ***A fine Structure of \$1,000.00 Per Day Is Not Legally Enforceable and Presumptively Unreasonable.*** Government Code section 36901 states in pertinent part, "The city legislative body may impose fines, penalties, and forfeitures for violations of ordinances. It may fix the penalty by fine or imprisonment, or both. A fine shall not exceed one thousand dollars (\$1,000)." The penalty must be reasonable, with reference to the offense. Giving a judge [Town Council] power to fix an unreasonable punishment for the offense, is void. *In re Ah You* (1891) 88 Cal. 99. Here, a penalty of up to \$1,000 per day where no neighbors were adversely affected is presumptively unreasonable, particularly where the Town Council is given the power to decide the amount of the fine.

As noted in the appeal, Government Code Section 36901 authorizes a city legislative body to impose fines for violations of local ordinances in an amount not to exceed one thousand dollars (\$1,000). The construction delay penalties set in Ross Municipal Code Chapter 15.50 represent the Town Council's legislative determination that construction delays exceeding 120 days (which includes a 30-day grace period) are the most egregious and merit the highest penalty tier of \$1,000 per day. The Town of Ross has reserved discretion to modify or cancel the penalties where the property owner can show that he or she was unable to comply with the construction time limit for reasons beyond the control of the owner and its representatives. See Ross Muni. Code Section 15.50.090. This process ensures that the penalty imposed by the Town will be reasonable based on the specific facts and circumstances in a given case.

A primary goal of the construction penalty ordinance is to ensure that neighborhood quality of life is maintained through avoidance of unreasonable construction delays. Although immediate neighbors did not lodge any formal written complaints with the Town, the Town Council may reasonably find that there was still a negative community impact due to the construction delays at 90 Sir Francis Drake given its highly visible location.

- d. ***Adjudicatory Hearing in Which Council Has a Facial Conflict of Interest Should be Avoided.*** The Council in this adversarial contested adjudicatory hearing sits as judges knowing the result is within the Council's power to impose a fine paid to a fund controlled by the same Council. There is a problem in our system of government when branches of government are combined, here the Council wears both an executive and a judicial hat. Accordingly, there is an inherent conflict of interest here for the Council to sit in judgment and have potential to impose significant six figure unreasonable fines, up to \$163,000 that will directly benefit the Town over which the Council is the ultimate authority. The Council should not sit as administrative law judges in a case like this and should contract the hearing out to a professional administrative law judge if for only to avoid the appearance of bias.

Due process generally requires the government to provide a hearing "before a reasonably impartial, noninvolved reviewer." *Nasha L.L.C. v. City of Los Angeles*, 125 Cal. App. 4th 470, 483

(2004) (emphasis in original). Due process may require disqualification of a decision maker if there is an unacceptable probability that he or she has an actual bias against a given outcome. See *id.* at 483-484.

We are not aware of any statute or court decision holding that a city council is biased by virtue of the fact that it has the power to impose a fine payable to the city. The fines would not represent a personal financial gain to the councilmembers. It is common practice throughout the state for a city council to hear appeals of city official determinations, even where the city may ultimately collect administrative costs and penalties. For example, city councils frequently adjudicate code enforcement appeals that may involve large fines. Taken to its logical conclusion, this argument would mean that a town council could not decide on any quasi-judicial matter, such as ad hoc fees or other conditions imposing financial burdens, where money or financial benefit would accrue to the town. There is simply no authority for the contention that an administrative law judge is required for contested adjudicatory hearings where fines and penalties may be imposed.

Courts have drawn a distinction between placing investigatory and adjudicatory authority in the same agency and the prohibited practice of placing that authority in the same person. For example, in *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), the Supreme Court considered a village mayor who had broad executive powers and who also sat as a judge trying traffic violations and imposing fines. The Court found a due process violation because the income from fines was a “major part” of the village’s income constituting between one-third and one-half of the village’s total budget. *Id.* at 58.

This situation is more similar to *Dugan v. Ohio*, 277 U.S. 61 (1928), which was cited with approval in the *Ward* decision. There, the city mayor had judicial functions but only very limited executive authority. The city was governed by a commission of five members, including the mayor, which exercised all legislative powers. A city manager, together with the commission, exercised all executive powers. In those circumstances, the Supreme Court held that the mayor's relationship to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.

Here, the administrative fines represent a very small percentage (approximately 2%) of the Town’s overall roughly \$8 million budget. This is within the benchmarks of current case law. More importantly, the executive functions of the Town are delegated to the Town Manager who is responsible for managing town finances under the policy direction of the Town Council. With the Town Manager form of government, the Council has no direct authority over subordinate staff, including the building official whose decision is being appealed from. The building official is hired by and reports to the Town Manager. Therefore, the executive and judicial functions are not vested in a single body to create a due process violation.

A generalized financial benefit is not sufficient to prove institutional bias on the part of the Town Council. The fact that the members of an adjudicating body have a general interest in the financial well-being of the government entity does not violate due process.

**11. Anticipated Witnesses.** Mr. Board anticipates calling the following persons at the contested adjudicatory hearing:

- A. Michael Board (Owner)
- B. Robert Haggett (Former Building Inspector)
- C. KJ (General Contractor)
- D. Trenor Askew (Lender)
- E. Miscellaneous Neighboring Property Owners

Staff will be present from Building, Planning and Fire, as well as a representative from the Town Attorney's office, to answer questions that Town Council may have.

<b>12. <u>Construction Days Credit Summary</u></b>	<b><u>Credit Days</u></b>
Item 1. Improper red tag	99
Item 2. Dry-out period	30
Item 3. Slow or no staff response	15
Item 4. Sidewalk/disability expanded work	60
Item 5. Sewer lateral	45
Item 6. New fire code compliance	30
Item 7. Additional fire sprinklers	20
Item 8. Pool water miscommunication	30
Item 9. Additional Garage Fence	20
	<b>349 Days Credit</b>

The credit calculations requested in Mr. Board's September 18, 2015 appeal letter have been provided here for reference. The applicant is asking for days credit in series. However, many of these tasks, or phases, can and should be done in parallel or concurrently.

**13. Conclusion.** *With 349 construction days' credit, the 223 days this project exceeded the 18 month time limit for construction are eliminated, and therefore no fine can be applicable. Accordingly, the Town Council, sitting as judges in this adjudicatory public hearing, should decline to impose any fine or lien on Mr. Board for his project located at 90 Sir Francis Drake Boulevard. Moreover, the neighbors were not unreasonably disturbed by this project as evidenced by the lack of any written complaints. The project was substantially complete within the time period before fines began to accrue. Unfortunately, staff generally failed to be responsive or give clear direction throughout this project, compounded by staff turnover, and required a new building permit when the owner agreed to restore the project to original plans while the project sat in an un-winterized condition October 23, 2013 to March 2014. Finally, strict application of the ordinance without consideration of the facts and circumstances present here would result in the imposition of an excessive fine amounting to forfeiture. For all of these reasons, we respectfully request that the Council impose no fine in this instance.*

The Ordinance sets forth automatic penalties, but gives the Town Council discretion to determine

whether circumstances beyond the control of the owner or its representatives merit cancelling or reducing the penalties in this case.

**Additional Excerpts from the August 13<sup>th</sup>** appeal letter appear in *italicized* font below with staff responses following in regular font. References to alphabetically labeled exhibits refer to those found in Mr. Rifkind's packets, and numbered exhibits are attached to this staff report.

2. ***March 14, 2013. Variance and Design Review No. 1897 approval added additional landscaping requirements. The additional of new landscaping requirements added 30 days to the project.***

Council may consider adding extra days for work outside the typical scope for a project. However, the overall project increased in scope and valuation such that an additional 90 days were allowed by the Town's Ordinance. This work should have been anticipated and scheduled concurrently with the interior remodel.

3. ***July 9, 2013. Amended building permit issued, and should constitute the start date for purposes of complying with Chapter 15.50. This permit reflects the current project. Prior work was minimal and interior. Accordingly, penalties, if any, should commence 18 months from July 9, 2013, or on January 9, 2015, not July 23, 2014 as staff recommends. We leave the reduction of any construction time to the discretion of the Council on this matter pointing out that no neighbor's quality of life was adversely affected between January 23, 2013 and July 9, 2013.***

The amended permit was for the added scope to include the garage remodel (valuation of \$36,000). The project started with the first permit issued 1/23/13 with a valuation of \$204,974.

6. ***Staff Turnover/Inefficient Communications. Town inspection schedule was disrupted with the departure of Inspector Robert Haggett and new Building Inspector Thomas Thompson. Mr. Thompson advised Ms. Simone Jamotte to let the Owner know next time he happened to stop by the Town Offices that Mr. Thompson had misplaced the Owner's phone number. Delay time is estimated to be 21 Days to the project.***

Inspections services were not disrupted. Mr. Thompson was asked to take over the inspections for this project in late December of 2013. No inspection requests were made to the Town between 8/15/13 and 3/1/14. See also the Email thread in Town Exhibit 1. Mr. Thompson proactively reached out to Mr. Board and his contractor.

7. ***Former Town Manager's Reduction of Inspector Hours Adversely Affected Delayed the Project. We are informed and believe former Town Manager, Rob Braulik, reduced the time available for inspections from 40 hours per week to 20 hours per week, when the Town typically has approximately \$80 million dollars of construction annually, all resulting in***

*unreasonable delays by staff in processing and inspecting this project in a timely manner. As a result staff was not always punctual in its responses to his requests for assistance with this project. Estimated delay is 30 Days.*

Inspections services were adjusted by the Town to be more efficient and cost effective, while still providing service levels required by construction activity. Inspections were provided Tuesday, Wednesday and Thursday, between 8 am and Noon, and by appointment, as needed, on Mondays or Fridays. Inspections were performed the next business day after receiving a request on the Town's voice mail. In no way was the project delayed by the inspection hours set by the Town.

**8. January 30, 2014. Original Contractor Terminated.** *Original contractor failed to perform and had to be replaced, specifically he framed the project improperly resulting in the red tag issued by the Town as referenced in No. 4. While the Owner acknowledges replacing a contractor is not a normal reason to excuse timely completion, here the poor workmanship and failure to follow approve plans, unknown to the Owner until discovered by staff directly lead to a material delay that the Owner attempted to correct as soon as reasonably possible.*

It does not appear that the original contractor (Armada Construction) ever called for an inspection of any kind. Mr. Board shared some communications with Staff that supports the idea that staff was not a source of the delays and that both contractors contributed to the problems affecting the timely construction of his project (See Town Exhibit 3). It is the owner's responsibility to manage the construction of the project and complete it in a timely manner.

**14. March 24, 2015. HVAC Relocation.** *Staff advised Owner informally without written notice to correct HVAC elevation out of the flood plain by chance on a visit to Town Hall. Apparently staff had misplaced Owner's telephone number. Delay to 20 days to the project.*

The project is subject to the Town's Flood Damage Prevention Ordinance (Ross Municipal Code Chapter 15.36). New HVAC units must be elevated above the Design Flood Elevation. A correction was properly issued. This item was discussed at the previous hearing.

#### **Fiscal, resource and timeline impacts**

If the Town Council upholds the penalties, the penalties will go into the general fund and offset unanticipated and additional staff costs in securing completion of this project.

#### **Alternative actions**

The Town Council may increase, reduce, or waive the construction completion penalty.

#### **Environmental review (if applicable)**

Not applicable

**Attachments:**

- Attachment I – *Updated* Time Line Overview (1 Page)
- Resolution No. 1910

**Referenced Documents:**

- 7/29/15 Notice of Public Hearing 90 Sir Francis Drake – Ross, which included:
  - 5/29/15 Letter to Mr. Board RE Construction Penalties and Town Action (2 pages)
  - Appeal letter submitted by applicant 6/4/15 (3 pages)
  - Draft Notice of Lien
- 10/8/2012 Agenda, Staff Report and Meeting Minutes (excerpt pp. 1, 36-43) from Variance and Design Review No. 1897, dated October 8, 2012
- 8/13/15 Council Meeting Staff Report (Item 14a)
- 8/13/15 Rifkind Appeal Packet distributed at the Council Meeting
- 9/18/15 Rifkind Appeal Packet emailed to Gregg Stepanicich and forwarded to Council

**Exhibits:**

- Exhibit 1: 1-8-14 Email thread between Board and Thompson
- Exhibit 2: 1-14-14 Email thread between Braulik and Thompson RE weatherproofing
- Exhibit 3: 1-30-14 Email thread between Braulik and Board RE FYI about contractor
- Exhibit 4: 10-30-13 Email from Semonian to Holder and Board
- Exhibit 5: 6-23-13 Supplemental Inspection Log (added to Attachment I summary)

## Attachment I – Updated Time Line Overview

<b>Date</b>	<b>Description of Council or other action (Building Valuation)</b>
10/8/12	Council Approves Variance and Design Review No. 1897
<b>1/23/13</b>	<b>Permit 17716 issued for original project scope (\$204,974)</b>
3/14/13	Council Amends Variance and Design Review No. 1897
6/26/13	<i>1<sup>st</sup> inspection request – foundations (Calvary Construction)</i>
7/9/13	Permit 17796 issued for garage remodel (\$36,000)
7/24/13	<i>2<sup>nd</sup> inspection request – garage foundations (Calvary Cons.)</i>
8/15/13	<i>3<sup>rd</sup> &amp; 4<sup>th</sup> Inspection requests – Framing, Sheathing, Main Roof (Calvary)</i>
10/23/13	Stop Work Order issued by Town, work exceeds approved scope
1/14/14	Revised plans to address stop work order submitted to Town
1/22/14	Plans reviewed and approved by Building Department
1/30/14	Stop Work Order lifted (Planning approved revised windows)
2/4/14	Permit 17920 issued for structural revision (\$45,000)
3/7/14	<i>1<sup>st</sup> Inspection Request recorded on Inspection Log by Thompson</i>
<b>4/23/14</b>	<b>Construction Completion Deadline through permit 18144</b>
<b>7/23/14</b>	<b>Revised Construction Completion Deadline through Permit 18206</b>
8/7/14	Progress Inspection – estimated project at 85%
8/21/14	Encroachment Permit 18050 for sidewalk repairs (\$65,000)
1/15/15	1 <sup>st</sup> notice of penalties for exceeding time limits issued by Town
2/23/15	Permit 18144 issued for sewer lateral replacement (\$3,000)
3/5/15	RVSD Hold Released
4/2/15	Building department final
4/14/15	Fire department final
4/14/15	MMWD Hold Released
4/16/15	Planning department final
4/20/15	<i>Re-sale inspection</i>
<b>5/14/15</b>	<b>Permit 18206 issued for corrected valuation of work (\$169,026)</b>
5/29/15	2 <sup>nd</sup> notice of penalties for exceeding time limits issued by Town
6/4/15	Notice of Appeal Received from Applicant

*Italicized items were added for clarification and reference*



# **TOWN OF ROSS**

## **RESOLUTION NO. 1910**

### **A RESOLUTION OF THE TOWN OF ROSS REGARDING THE APPEAL OF AND DETERMINATION REGARDING THE FINAL AMOUNT OF CONSTRUCTION DELAY PENALTIES, LATE CHARGES AND INTEREST FOR 90 SIR FRANCIS DRAKE BOULEVARD, ROSS, CALIFORNIA (APN 072-151-06)**

**The Town Council of the Town of Ross hereby finds, determines, orders and resolves as follows:**

#### **Section 1. Recitals.**

1. Ross Municipal Code, Chapter 15.50, Time Limits for Completion of Construction requires property owners seeking to improve their properties to complete construction in a reasonable amount of time as provided in the Code in order to ensure that neighborhood quality of life is maintained and that activities associated with construction, such as increased noise, traffic and associated impacts, are managed in a reasonable way.

2. There exists certain real property within the Town of Ross known as 90 Sir Francis Drake Boulevard, Ross, California 94957 (APN 072-151-06) (the "Property"), which according to the tax records of the Town, is owned by Michael Board (the "Owner").

3. On October 8, 2012, the Town Council approved Variance and Design Review No. 1897 for a 559 square foot second story addition within the main roof form of the residence, new shed dormers and windows, repairs to the garage and pool house, and modifications to the pool patio area on the Property, subject to certain findings and conditions, including a landscape plan and sidewalk repair to be approved by staff (the "Project").

4. On January 23, 2013, a building permit (permit no. 17716) was issued to the contractor of record, Armada Construction, on behalf of the Owner for initial remodeling (including kitchen, bath, dormers, and roof) related to the Project at the Property.

5. Based on the Project's original valuation of \$204,974, the construction was required to be completed within 15 months, by April, 23, 2014, under the provisions of Chapter 15.50 of the Municipal Code.

6. During construction, the scope of work changed (building permit nos. 17796, 17920, 18050, 18144, 18206) thereby increasing the Project valuation to \$523,000. The revised construction completion deadline was determined to be July 23, 2014.

7. Final Town written approval for the Project did not occur until April 16, 2015, when the Project complied with all Town Council conditions of approval, including final inspection by the Ross Valley Fire Department and Town Planning Department. The Building Department Final date of April 2, 2014 was used to determine penalties.

8. On May 29, 2015, the Town Building Official provided the Owner written notice that the said construction delay had incurred penalties in the amount of \$163,000 and demanded payment of said penalties, less the deposit of \$6,169, in the remaining amount of \$156,831. Said notice further provided that payment was due within 30 days to avoid late payment penalties and interest, and if payment was not received within 45 days, the total amount would become a lien on the Property.

9. On June 4, 2015, the Owner, through legal counsel, filed a timely appeal of the demand for monetary penalties relating to the time limits for completion of construction on the following grounds:

- (i.) Improper Red Tag and Town Delay in Processing;
- (ii.) Failure of Town and Ross Valley Fire District to Provide Timely Inspection for Final Permit Approval;
- (iii.) Sidewalk and Accessibility Ramp Project Expanded Scope of Work;
- (iv.) New Sewer Lateral required by Ross Valley Sanitary District;
- (v.) New Fire Wall and Sprinkler Requirements by Ross Valley Fire District; and
- (vi.) Relocation of HVAC Units.

10. Staff determined that the Owner was not prevented from complying with the construction time limit for reasons beyond the control of itself and its representatives. Specifically:

- (i.) Improper Red Tag and Delay of Processing: The Red Tag resulted from the Project's noncompliance with Condition #1 of the Variance and Design Review No. 1897 that the project comply with the construction plans dated September 25, 2012 as approved by the Town Council on October 8, 2012. In particular, the Project's second story addition failed to conform to the main roof form of the residence. Pursuant to Condition #23 of the Variance and Design Review No. 1897, failure to comply in any respect with the conditions or approved plans constitutes grounds for Town Staff to immediately stop work related to the noncompliance until the matter is resolved. Revised plans for the construction changes were submitted by the Owner on January 14, 2014. The Town timely processed and approved the plans, lifting the Red Tag on January 30, 2014 and issuing a building permit for the revised work on February 2, 2014.
- (ii.) Failure of Town and Ross Valley Fire District to Provide Timely Inspection for Final Permit Approval: Final inspection and approval cannot be given until a project is actually completed. Condition #31 of the Variance and Design Review No. 1897 states that the project is subject to the conditions of the Town of Ross Construction Completion Ordinance and that failure to complete construction by the construction completion date would result in automatic penalties. Condition #31 further informed the Owner that pursuant to Ross Municipal Code Section 15.50.040, "construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written

approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.”

The Town performs Building Inspections within 24 hours of an inspection request made by phone to the Town, which was received for the Project on about April 1, 2015. There is no evidence that Ross Valley Fire Department unreasonably delayed final inspection.

The Town Building Department released its hold on the Project on 4/2/15. The Town Planning Department released its hold on the Project on 4/16/15. Ross Valley Fire District released its hold on the Project on 4/14/15. For purposes of determining the penalty calculation for this Project, the Building Official determined that the construction completion date for this project could be April 2, 2015.

- (iii.) Sidewalk and Accessibility Ramp Project Expanded Scope of Work: Condition #34 of the Variance and Design Review No. 1897 states “All cracked, broken or uplifted sidewalk fronting the property shall be replaced prior to project final. The property owner shall maintain 4 feet of clearance on the sidewalk at all times, even after project final.” Two Council Members commented on the disrepair of the sidewalk fronting the Property during the October 8, 2012 public hearing on the Project. (See October 8, 2012 Minutes, p. 37.) Further, the Town Council’s approval of Variance and Design Review No. 1897 was expressly conditioned upon “sidewalk repair to be approved by staff.” (See October 8, 2012 Minutes, p. 38.) The required sidewalk repairs and access ramp were not unanticipated repairs.
- (iv.) New Sewer Lateral required by Ross Valley Sanitary District: Pursuant to Condition #25 of the Variance and Design Review No. 1897, the Project must comply with all requirements of all utilities including, but not limited to, Ross Valley Sanitary District, prior to project final. Condition #25 further required that letters confirming compliance to be submitted to the building department prior to project final. Had the Owner completed construction by the deadline of July 23, 2014, the new sewer lateral requirement would not have interfered with completion of the Project. At the time the Owner was constructing the new sewer lateral there were other items of unfinished work at the Project.
- (v.) New Fire Wall and Sprinkler Requirements by Ross Valley Fire District: Pursuant to Condition #29 of the Variance and Design Review No. 1897, the Project is required to comply with all requirements of the Ross Valley Fire Department. Condition #30 of the Variance and Design Review No. 1897 expressly required sprinklers to be installed in the residence. Corrections were issued when the Fire inspector identified noncompliance with the building and fire codes. Further, the use of or need for specialized subcontractors to install the sprinkler system is not a legitimate ground of appeal under Ross Municipal Code Section 15.50.090(a)(2).
- (vi.) Relocation of HVAC Units: The project is subject to the Town’s Flood Damage Prevention Ordinance (Ross Municipal Code Chapter 15.36). New HVAC units must be elevated above the Design Flood Elevation. A correction was properly issued.

11. On Thursday, August 13, 2015, the Town Council held a duly noticed public hearing to consider the Owner's appeal of the of the construction completion penalty, and to consider whether the construction delays occurring at the Property constituted a public nuisance pursuant to the Ross Municipal Code § 15.50.070, and the amount of the construction delay penalties, late charges and interest. The hearing was continued until October 6, 2015.

12. On August 13, 2015 and September 18, 2015, the Owner (through his attorney) submitted further grounds of appeal:

- (i.) Stop work order improperly issued.
- (ii.) Drying out period.
- (iii.) Town's slow response to Mr. Board's request for assistance.
- (iv.) May, 2014. Sidewalk and Disability Access Improvements Sidewalk Project.
- (v.) Unanticipated Work: Sewer lateral.
- (vi.) Unanticipated Work: Fire Code compliance.
- (vii.) Unanticipated Work: Additional Fire Sprinklers.
- (viii.) Unanticipated Work: Pool water.
- (ix.) Unanticipated Work: New exterior garage fence.
- (x.) Other policy considerations, including compliance with the purpose of the ordinance, town focus, the legality of the fine structure and whether the Town Council has a facial conflict of interest.

13. In reviewing these further arguments, Staff determined that the Owner was not prevented from complying with the construction time limit for reasons beyond the control of itself and its representatives. Specifically:

- (i.) Stop work order improperly issued. See finding in subsection 10(i), above. The changes to building height and dormer design were elementary parts of the design review approval. The failure to comply with the conditions or approved plans constituted grounds for Town Staff to immediately stop work related to the noncompliance until the matter was resolved. In particular, staff needed to assess whether the changes necessitated further Town Council design review approval.
- (ii.) Drying out period. Installing and maintaining framing members with the proper moisture content is a code requirement and the responsibility of the contractor to properly secure the site and protect the framing during the rainy season. A project with a stop work order does not relieve the contractor of this responsibility to secure and maintain the site.
- (iii.) Town's slow response to Mr. Board's request for assistance. The incomplete phone records provided by Mr. Board do not demonstrate that staff delays caused his construction project to be delayed.
- (iv.) May, 2014. Sidewalk and Disability Access Improvements Sidewalk Project. See finding in subsection 10(iii), above. Mr. Board could have met with staff in 2012 to determine the extent of the sidewalk replacement requirements. It is the property

owner's responsibility to meet all code requirements such as disability accessibility.

- (v.) Unanticipated Work: Sewer lateral. See finding in subsection 10(iv), above. At the time the Owner was constructing the new sewer lateral there were still other items of unfinished work at the Project, including landscaping, MMWD project-sign off, and correcting the location of the HVAC unit.
- (vi.) Unanticipated Work: Fire Code compliance. See finding in subsection 10(v), above. It is the property owner's responsibility to build a structure that meets the code requirements. Code requirements cannot be waived simply because they did not appear as deficiencies at previous inspections.
- (vii.) Unanticipated Work: Additional Fire Sprinklers. See finding in subsection 10(v), above. It is the property owner's responsibility to build a structure that meets the code requirements.
- (viii.) Unanticipated Work: Pool water. Any miscommunication about pool water did not cause a 30 day delay.
- (ix.) Unanticipated Work: New exterior garage fence. A barrier fence is required as a pool safety code requirement. Once the Owner decided to keep and repair the pool rather than demolish it, he was required to meet the pool safety requirement. Staff is not responsible for this change in plans.
- (x.) Other policy considerations, including compliance with the purpose of the ordinance, town focus, the legality of the fine structure and whether the Town Council has a facial conflict of interest:
  - a. Purpose of the ordinance: There is a legislative presumption of harm to the community due to long delays in the completion of construction. There is no need for the Town to show specific harm to neighbors.
  - b. Town's focus: The record shows that the Town's focus in this matter has been securing code compliance based on approved plans and conditions, not revenue collection.
  - c. Legality of fine structure: Government Code Section 36901 authorizes a city legislative body to impose fines for violations of local ordinances in an amount not to exceed one thousand dollars (\$1,000). The construction delay penalties set in Ross Municipal Code Chapter 15.50 represent the Town Council's legislative determination that construction delays exceeding 120 days (which includes a 30-day grace period) are the most egregious and merit the highest penalty tier of \$1,000 per day.
  - d. Conflict of interest: The executive and judicial functions are not improperly vested in a single body in violation of due process. While the Town of Ross exercises quasi-judicial authority in considering this appeal, executive functions have been delegated to the Town Manager. The Council has no direct authority over subordinate staff, including the building official whose

decision is being appealed from. Moreover, the administrative fines represent a very small percentage (approximately 2%) of the Town's overall roughly \$8 million budget. Therefore, the executive and judicial functions are not vested in a single body to create a conflict of interest.

**Section 2. Decision.**

1. The facts set forth in Recitals, Section 1, of this Resolution are true and correct.
2. The Town Council hereby DENIES the Owner's appeal.
3. The Town Council hereby finds that construction delays on the Property constituted a public nuisance pursuant to Ross Municipal Code § 15.50.070.
4. The Town Council hereby determines that the construction delay penalties shall be \$163,000, less the deposit of \$6,169, for a remaining balance of \$156,831. In addition, a 10% late penalty is hereby charged, and twelve percent annual interest shall apply. However, no interest shall be charged for the time the appeal was pending.
5. The Town Clerk is directed to certify to the adoption of this Resolution and transmit copies of this Resolution by certified mail, return receipt requested to the Property Owner, and to cause a certified copy of this Resolution to be placed permanently in Town records.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at a special meeting held on the 6<sup>th</sup> day of October, 2015, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Kathleen Hoertkorn, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

## Exhibit 1

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**From:** Tom Thompson  
**Sent:** Wednesday, January 08, 2014 1:36 PM  
**To:** Mike board  
**Cc:** Sal Lucido; Rob Braulik; Elise Semonian  
**Subject:** RE: 90 Sir Francis Drake Blvd., Ross

Hi Michael Board;

It was nice meeting you and your General Contractor this late Wednesday morning at the project. I look forward in working with your contractor on this project. I talk with Ms. Elise Semonian just after our meeting and she was happy that the meeting was successful and that you will be supplying her four complete sets of plans; she has only elevation plans from the architect which she agree with; and a new Title -24 for the new windows. The original plans show existing windows only. I informed her you would have everything into her by Tuesday next week (01-14-2014) but if you can do it sooner or your Architect can do it sooner it would make the approval process quicker. If you have any questions or your architect has any questions please call me at 707-495-4193.

Sincerely;

Thomas Thompson  
Senior Building Inspector  
Plans Examiner  
Coastland Civil Engineering,  
Construction Management, and  
Building Department Services

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**From:** Mike board [mailto:michaelbboard@yahoo.com]  
**Sent:** Tuesday, January 07, 2014 3:17 PM  
**To:** Tom Thompson  
**Subject:** Re: 90 Sir Francis Drake Blvd., Ross

I can prob be there @11ish, I have an appt at 9 in Benicia and come shoot across 37 after, that should be fine. Is it things I can fix, or is contractor stuff? I dont know about the building process or names for things if its technical at all?

Can I bring my ck book and get the fees paid and get these ppl back out there because with a no-work order in place not even repairs are getting done?

thx

---

**From:** Tom Thompson <[thompson@coastlandcivil.com](mailto:thompson@coastlandcivil.com)>  
**To:** Mike board <[michaelbboard@yahoo.com](mailto:michaelbboard@yahoo.com)>  
**Cc:** Sal Lucido <[lucido@coastlandcivil.com](mailto:lucido@coastlandcivil.com)>; Rob Braulik <[rbraulik@townofross.org](mailto:rbraulik@townofross.org)>  
**Sent:** Tuesday, January 7, 2014 3:05 PM  
**Subject:** RE: 90 Sir Francis Drake Blvd., Ross

Thank you for the quick response, If possible I would like it at 11:00 am if that can work for you otherwise 12 it is. Looking forward to meeting you.

Thomas Thompson

**From:** Mike board [<mailto:michaelbboard@yahoo.com>]  
**Sent:** Tuesday, January 07, 2014 2:58 PM  
**To:** Tom Thompson  
**Cc:** Sal Lucido; Rob Braulik  
**Subject:** Re: 90 Sir Francis Drake Blvd., Ross

Hi Tom.

Id like to come out there tomoro. I live in Vacaville and thats how this all went to pot in the first place is because I wasnt there to babysit these fools I hired.  
Would 12 be ok?

**From:** Tom Thompson <[thompson@coastlandcivil.com](mailto:thompson@coastlandcivil.com)>  
**To:** "michaelbboard@yahoo.com" <[michaelbboard@yahoo.com](mailto:michaelbboard@yahoo.com)>  
**Cc:** Sal Lucido <[lucido@coastlandcivil.com](mailto:lucido@coastlandcivil.com)>; Rob Braulik <[rbraulik@townofross.org](mailto:rbraulik@townofross.org)>  
**Sent:** Tuesday, January 7, 2014 2:38 PM  
**Subject:** 90 Sir Francis Drake Blvd., Ross

Dear Mr. Board;

I like to introduce myself. I am Mr. Thomas Thompson, the Town of Ross Senior Building Inspector and Plans Examiner. The Town has asked me to perform a site review at the subject property. The Town Manager, Mr. Rob Braulik, and Town Planner, Ms. Elise Semonian identified some concerns that need to be addressed. I would like to talk to you in person or over the phone at your convenience about all the issues so the project can get back on track. Please give me a call at my Office 707-571 8005 or my Cell Phone at 707-495-4193. I look forward in talking with you about your project.

Sincerely;

Thomas Thompson  
Senior Building Inspector  
Plans Examiner  
Coastland Civil Engineering  
Construction-Management- Building Department Services



## Exhibit 2

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**From:** Tom Thompson  
**Sent:** Tuesday, January 14, 2014 4:19 PM  
**To:** Sal Lucido  
**Subject:** FW: 90 Sir Francis Drake Blvd.

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**From:** Rob Braulik [mailto:rbraulik@townofross.org]  
**Sent:** Tuesday, January 14, 2014 1:30 PM  
**To:** Tom Thompson  
**Subject:** RE: 90 Sir Francis Drake Blvd.

Ok by me

---

**From:** Tom Thompson [mailto:thompson@coastlandcivil.com]  
**Sent:** Tuesday, January 14, 2014 1:30 PM  
**To:** Rob Braulik  
**Subject:** 90 Sir Francis Drake Blvd.

Hi Rob;

I got an e-mail from Michael Board and he would like to cover the house from the rain by placing plastic on the walls, window and roof if possible. Do you have an objections to his request or so you want to wait until Coastland sent their comment letter or return the plans. Please let me know.

Tom

### Exhibit 3

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**From:** Rob Braulik <rbraulik@townofross.org>  
**Sent:** Thursday, January 30, 2014 7:28 PM  
**To:** Tom Thompson  
**Cc:** Sal Lucido  
**Subject:** Fwd: 90 SFD.

FYI only. Thanks

Begin forwarded message:

**From:** Elise Semonian <esemonian@townofross.org>  
**Subject:** RE: 90 SFD.  
**Date:** January 30, 2014 at 7:20:00 PM PST  
**To:** Rob Braulik <rbraulik@townofross.org>, Simone Jamotte <sjamotte@townofross.org>

Odd.

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**From:** Mike board [mailto:michaelbboard@yahoo.com]  
**Sent:** Thursday, January 30, 2014 5:14 PM  
**To:** Elise Semonian; Rob Braulik; Simone Jamotte  
**Subject:** Fw: FW: 90 SFD.

On Thursday, January 30, 2014 5:12 PM, Mike board <michaelbboard@yahoo.com> wrote:

KJ advised me to do that bathroom blow thru against plan, I naively agreed. He said it was to have hang points for ledgers or joists or some such thing and a beam below? At what point do you acknowledge your role in this debacle? Im sure you'd love to pin it all on me. But the architect stood right there as my Contractor advised me, against plan, to build his idea for better construction.

And an actual Contractor needs to be present, not the hodge podge of trainees druggies and flakes that ran the show previously, I asked specifically if you were on-site contractors after the BIG BRAIN BRAD fiasco,, you both

repeatedly assured me you would be as its a 'big dollar' big job'. Not even close.

Dropping a trailer off once every week or two, or hauling one out, or dropping a jackhammer or some saw blades and flipping a Uturn is not what that job requires. Had KJ actually worked the job i'm sure he would have contacted the architect, when even a regular citizen could see the peaks were out of line,,,,,,, and me having to call you to tell you your son and pals bounced at 230 and 330 and 4 is unprofessional. The work day is 8-5. Ill be by tomorrow  
thanks Mike

On Thursday, January 30, 2014 3:23 PM, Ken Casper <kjroadside@gmail.com> wrote:

Thank You Mike.

Elise was not in yesterday, but today the tag was lifted . please pay the permit ,lets work out the changes ....and Mr.Askew needs to pay subs. and Your responsible costs to change back structure to new plan.

Change orders are due upon signature, after I receive revised plan a schedule as well as cost will be given, & signatures taken

On Wed, Jan 29, 2014 at 5:20 AM, Mike board <michaelbboard@yahoo.com> wrote:

Kj ..This is why the tag isn't lifted. You won't follow thru on showing a window to Elise and rely on everyone else like Tim at home depot to send spec sheets. Another week lost at 15k/4weeks= @\$4000. But then is wondering why tag isn't lifted and subs PD. Permit jus sitting there and you've done little ....I don't get it.

I thought you still wanted this job. We need to get down in writing that YOU will actually be on site not the third string try out and new hire trainees that have been sent there w little to zero supervision w 930 start times and rolling up at 3. Traffic is not a job concern and you knew this when you took the job. Stay at a motel if they need to. Call me please. You Havnt called back as you said you would Monday and I told you then the permits ready and tag lifted but you don't seem fired up to start?? What's really going on....do you not have crews that can do this I need to know that weeks and mos ago if so. The rag tag team of ever rotating rookies and family and trainees that were there before I hope have been replaced w seasoned pros and this can be knocked out quickly as pop and you assured me nearly a yr ago coming up. \$1000 fines start June for non completion by the Town. Again please call me and get a window to Elise or as she stated if its

the one you already brought to her that she has sitting there then thats fine too but do something please one way or another. Its 5am wed. Thanks

----Forwarded message-----

From: sjamotte@townofross.org

To: michaelbboard@yahoo.com  
Cc: rbraulik@townofross.org  
Sent: Tue, Jan 28, 2014 9:16 AM PST  
Subject: 90 SFD.

Hello Mike

Before your contractor can pull the permit for your project, you must submit to planning either specs of the windows you are planning to install, or you may bring a window and show it to Elise. Once she is ok with it. Your plans will be ready for pick up.

Thanks

Simone

---

Simone Jamotte  
Town of Ross  
P.O. Box 320  
Ross, CA 94957  
415-453-1453 x 106  
Fax: 415-460-9761  
[sjamotte@townofross.org](mailto:sjamotte@townofross.org)

This email and any attachments may contain information that is confidential, privileged and protected from disclosure. Review, dissemination or copying is prohibited. If this email is not intended for you, please notify the sender and immediately delete the entire transmittal.

## Exhibit 4

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**From:** Elise Semonian  
**Sent:** Wednesday, October 30, 2013 2:36 PM  
**To:** Kenneth Holder; Mike board (michaelbboard@yahoo.com)  
**Cc:** Rob Braulik; Elise Semonian  
**Subject:** 90 Sir Francis Drake

Hello Mr. Board,

If you would like the Town to approve the modifications made to the roof and windows at 90 Sir Francis Drake, you will need to submit plans for the Town Council to review. The fee for an after-the-fact request for a project revision will be \$5,3541.42 (\$1,664 for the revision and a \$119.81 technology fee/tripled for after-the-fact). The fee is not refunded if the application is not approved. If I receive a complete application for the revisions by 11/18, I can put the application on the 12/12 Town Council agenda. You must submit the same level of plans that you submitted for the last plan change for the garage. Staff will not support the modifications to the non-divided lite windows and the roofline that extends above the existing roofline and will recommend that the design remain as approved. If the Town Council approves the application, you will need to submit revised drawings to the building department for review and approval prior to continuing to work on the unpermitted parts of the project. The building department may take several weeks to review the drawings and corrections may be required. So, there may be additional time needed for you to respond to the corrections and for the Town to review the revisions. So, please consider the potential time delay to your project that may result from your project change and the Town construction completion time limit.

Alternatively, you may remove the un-permitted work and construct the residence in conformance with the approved plans. I will approve replacement of the existing windows with new windows with the same design as shown on the plans (divided lite replacing divided lite...). However, you must submit plans for this revision to the building department for review and approval, and revised energy calculations, prior to working on the windows. I will consider the quality of the windows proposed.

If you elect to continue with the approved plans and to submit revised plans for the new window work, you must put this in writing to the Town before we will lift the stop work order. No work may take place on the new windows until plans have been submitted for review and have been approved by the Town.

Please keep in mind that, for after-the-fact permits, the Building Department charges a 20% penalty on the value of work done without permit (not 20% of the building permit fee).

Please let me know if you have any questions.

-Elise

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Elise Semonian  
Senior Planner  
Town of Ross | Planning  
P.O. Box 320 | 31 Sir Francis Drake Boulevard, Ross, CA 94957-0320  
415.453.1453 extension 121  
fax 415.453.1950  
esemonian@townofross.org

## Municipal Code | MARINMAP

The Planning Department is open Monday through Thursday and on alternate Fridays from 8:30 a.m. to 12:00 p.m. Afternoon appointments are also available.

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DATE 6/26/13 REMARKS Mile - 707 372 8907  
 ADDRESS 90 S.F.D.  
 NAME Calvary Cons Exhibit 5  
 DATE RECEIVED 707 - 416 6743 Page 1 of 4  
Calvary Cons  
K.J.

BUILDING	PLUMBING	ELECTRICAL	HEATING	POOL
Site Grade Footings / Foundation Piers Slab Fireplace Roof Structural Frame Floor Frame Drywall Lath Scratch Brown Insulation Close-In Final	Under Floor 2nd Floor Rough Topout Gas Piping Water Service Chemical Toilet Sewer Final Solar	Temp. Pole U Ground Roof Slab Rough New Service Final	Under Floor Ducts Vents Air Cond. Radiant Final	Site Steel Plumbing Electric Heater Gas Piping Pre-gunnite Final
Approved	Approved	Approved	Approved	Approved
Correction	Correction	Correction	Correction	Correction
FINALED	FINALED	FINALED	FINALED	FINALED

TOWN OF ROSS --- INSPECTION REQUEST

DATE 7/24/13 REMARKS  
 ADDRESS 90 S.F.D.  
 NAME Calvary Cons  
 DATE RECEIVED 7/23/13  
S.D.L.

BUILDING	PLUMBING	ELECTRICAL	HEATING	POOL
Site Grade Footings / Foundation Piers Slab Fireplace Roof Structural Frame Floor Frame Drywall Lath Scratch Brown Insulation Close-In Final	Under Floor 2nd Floor Rough Topout Gas Piping Water Service Chemical Toilet Sewer Final Solar	Temp. Pole U Ground Roof Slab Rough New Service Final	Under Floor Ducts Vents Air Cond. Radiant Final	Site Steel Plumbing Electric Heater Gas Piping Pre-gunnite Final
Approved	Approved	Approved	Approved	Approved
Correction	Correction	Correction	Correction	Correction
FINALED	FINALED	FINALED	FINALED	FINALED

## TOWN OF ROSS --- INSPECTION REQUEST

Exhibit 5  
Page 2 of 4

DATE 8-15-13  
 ADDRESS 90 S.F.D.  
 NAME Calvary Cons  
 DATE RECEIVED 8-14-13

REMARKS RAY

BUILDING	PLUMBING	ELECTRICAL	HEATING	POOL
Site Grade	Under Floor	Temp. Pole	Under Floor	Site
Footings / Foundation	2nd Floor	U Ground	Ducts	Steel
Piers Slab	Rough	Roof	Vents	Plumbing
Fireplace Roof	Topout	Slab	Air Cond.	Electric
Structural Frame	Gas Piping	Rough	Radiant	Heater
Floor Frame <i>Frang</i>	Water Service	New Service	Final	Gas Piping
Drywall Lath	Chemical Toilet	Final		Pre-gunnite
Scratch Brown	Sewer			Final
Insulation	Final			
Close-In				
Final	Solar <i>RNA 8/15/13</i>			
Approved	Approved	Approved	Approved	Approved
Correction	Correction	Correction	Correction	Correction
FINALED	FINALED	FINALED	FINALED	FINALED

## TOWN OF ROSS --- INSPECTION REQUEST

DATE 8/15/13  
 ADDRESS 90 S.F.D.  
 NAME CALVARY CONS  
 DATE RECEIVED 8/14/13

REMARKS 707 416 6743  
Ken

BUILDING	PLUMBING	ELECTRICAL	HEATING	POOL
Site Grade	Under Floor	Temp. Pole	Under Floor	Site
Footings / Foundation	2nd Floor	U Ground	Ducts	Steel
Piers Slab	Rough	Roof	Vents	Plumbing
Fireplace Roof	Topout	Slab	Air Cond.	Electric
Structural Frame <i>ext</i>	Gas Piping	Rough	Radiant	Heater
Floor Frame	Water Service	New Service	Final	Gas Piping
Drywall Lath <i>shew</i>	Chemical Toilet	Final		Pre-gunnite
Scratch Brown	Sewer			Final
Insulation	Final			
Close-In				
Final	Solar <i>RNA 8/15/13</i>			
Approved	Approved	Approved	Approved	Approved
Correction	Correction	Correction	Correction	Correction
FINALED	FINALED	FINALED	FINALED	FINALED



# INSPECTION LOG

Date of Inspection	Project Address: <u>9051R FRANCIS DR BK</u> Permit #: <u>17920</u>	Approved By:
	monte - 707-365-3444 Description	
3/9/14	Progress Inspection, Just kept going everything is coming together	PR
3/21/14	Exterior house sheathing, approved to have sewer wire / rock to be installed	PR
4/8/14	Basement going place slab - Rebar and Capon barrier per spec	PR
4/8/14	Progress Inspection for Casing App.	PR
4/10/14	Rough Framing, electrical, mechanical plumbing approved ok to Insulate	PR
4/10/14	Nothing for exterior is completed and flashing for windows & doors	PR
4/15/14	NOT READY - Insulation installed wrong - Change for Inspection	PR
4/16/14	Insulation approved	PR
4/21/14	Interior shear wall marking per approved plans	PR
4/30/14	Sheet Rocking approved	PR
5/3/14	Stucco scratch coat approved	PR
6/11/14	Brown Coat approved	PR
8/7/14	Called monte GC 707-365-3444 stop by project, no one on site, Project is 85% completed for house - site and pool work has not been started pool still with water	PR
10/30/14	Inspection for finish stucco and plumbing	PR
12/30/14	no one there on site.	PR

1/13/15 Left Bureau (and at Front & back door to house) GC or owner to call me. PR

# INSPECTION LOG

Date of Inspection	Project Address: _____ Permit #: _____	Approved By:
	Description	
1/15/15	Talk with Werner, Has a talking with a possible buyer. Werner, can for RWA	
4/2/15	<p>Connections —</p> <ol style="list-style-type: none"> <li>1) used alarm on Pedstrom Corp</li> <li>2) used new elevator certification without mechanics listed on the Cert.</li> <li>3) remove AC from property</li> </ol>	